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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ERIC SMITH,

Plaintiff and Appellant,

v.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY,

Defendant and Respondent.

B269445

(Los Angeles County
Super. Ct. No. NC059789)

APPEAL from an order and judgment of the Superior Court of Los Angeles
County. Michael P. Vicencia, Judge. Affirmed.

Eric Smith, in pro. per., for Plaintiff and Appellant.

Thy Monaco for Defendant and Respondent.

Eric Smith (Smith) challenges a trial court order sustaining the demurrer of Board of Trustees of the California State University (CSU) to Smith's second amended complaint (SAC) without leave to amend.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Smith initiated this action against CSU on November 18, 2014. CSU filed a demurrer to the original complaint, and, before the hearing on that demurrer, Smith filed a first amended complaint. CSU then filed a demurrer to the first amended complaint. The trial court sustained that demurrer with leave to amend.

On July 16, 2015, Smith filed the SAC, alleging two causes of action against CSU: (1) violation of Smith's due process rights and executive order 1038; and (2) violation of Education Code section 32261 (harassment retaliation). CSU again filed a demurrer, arguing, *inter alia*, that the SAC failed to state facts sufficient to form a cause of action and failed to show compliance with the claims filing statute.

The trial court sustained CSU's demurrer without leave to amend. A judgment of dismissal was entered, and Smith's timely appeal ensued.

DISCUSSION

I. Standard of review

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: 'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]" [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by

amendment. [Citation.]’ [Citations.]” (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. The demurrer was properly sustained without leave to amend

“‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, in challenging a judgment, the appellant must raise claims of reversible error or other defect, and “present argument and authority on each point made.” (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; accord, *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.) “[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.)

Smith has failed to meet his burden on appeal. In particular, his opening brief is largely devoid of record citations. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.) And, he largely neglected to address the legal issues that the trial court found bar his action. “‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ [Citation.] [¶] It is the duty of [appellant], not of the courts, ‘by argument and the citation of authorities to show that the claimed error exists.’ [Citation.]” (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) Since the issues as raised in Smith’s opening brief are not properly presented or sufficiently developed to be cognizable, we could decline to consider them and treat them as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v.*

Turner (1994) 8 Cal.4th 137, 214, fn. 19; *In re David L.* (1991) 234 Cal.App.3d 1655, 1661.) Nor does Smith's election to act as his own attorney on appeal entitle him to any leniency as to the rules of practice and procedure; otherwise, ignorance unjustly is rewarded. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Lombardi v. Citizens Nat. Trust Etc. Bank* (1955) 137 Cal.App.2d 206, 208–209; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

Setting the foregoing procedural obstacles aside, we conclude that the trial court properly sustained CSU's demurrer without leave to amend. First, Smith failed to allege sufficient facts showing compliance with the Government Tort Claims Act (the Act) (Gov. Code, § 810 et seq.).¹ Under the Act, "no suit for 'money or damages' may be brought against a public entity until a written claim has been presented to the entity and the claim either has been acted upon or is deemed to have been rejected." (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1493; see also §§ 905, 945.4.) "Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209, superseded by statute on other grounds as stated in *A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1258.) Here, Smith generically alleges that he "complied with the tort claim act." But he does not allege facts demonstrating such compliance. (See § 910; *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239.) Despite three demurrers pointing out this pleading deficiency, Smith has yet to provide this requisite information. On this ground alone, the trial court properly sustained the demurrer to the SAC without leave to amend.

Moreover, the SAC fails to state sufficient facts to constitute causes of action against CSU. The first cause of action is based on an alleged violation of Smith's due

¹ All further statutory references are to the Government Code unless otherwise indicated.

process rights. But, Smith does not allege facts demonstrating a constitutional violation.

In urging reversal, Smith argues that CSU's failure to hold a hearing violated his due process rights. According to Smith, because CSU acted in bad faith, it was required to hold a hearing before dismissing him. But, Smith does not allege any facts that establish that CSU acted in bad faith. Because CSU was not required to hold a hearing, Smith is not entitled to damages for the alleged due process violations.

Similarly, the second cause of action is deficient. It is based upon an alleged violation of Education Code section 32261. But, that statute only applies to elementary and secondary schools. And, Smith has not shown how it allows him to bring a private cause of action against CSU for its alleged violation. Because Smith did not show below, and continues not to demonstrate on appeal, how this cause of action can proceed, we conclude that the trial court rightly sustained the demurrer without leave to amend.

Finally, Smith contends that the trial court's staff engaged in "bizarre conduct," by intentionally misleading him. He claims that the staff is doing so to "test [his] credibility" based upon his "previous allegations against influential parties [within] the court system and law enforcement." These unfounded assertions do not warrant reversing the trial court's order and judgment.

DISPOSITION

The order sustaining CSU's demurrer and judgment of dismissal are affirmed. CSU is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT